

MOTION PICTURE INCENTIVE FUND AGREEMENT BETWEEN  
THE STATE OF UTAH  
AND  
**COMPANY NAME**

This Motion Picture Incentive Fund Agreement (“Agreement”) is made and entered into this ## day of MONTH, 2008 (“Effective Date”), by and between **COMPANY NAME**, a **STATE & TYPE OF COMPANY** hereinafter referred to as the “Applicant” and the State of Utah, acting through the Governor’s Office of Economic Development as Administrator of the Motion Picture Incentive Fund (MPIF) hereinafter referred to as the “State” for the **TYPE OF PRODUCTION** production of **NAME OF PRODUCTION**.

RECITALS

A. The State of Utah has determined that fostering and developing industry in the State is a public purpose desirable to assure the welfare of its citizens, the growth of its economy, and adequate employment of its population; and in furtherance thereof, has enacted Utah Code Ann. Sec. 63M-1-1801, et seq. (2008) (the “Act”) pursuant to which the Motion Picture Incentive Fund (MPIF) was created; and

B. The Administrator, as defined in the Act, has determined that in order to qualify for assistance from such fund, a business must show promise and demonstrate to the satisfaction of the Administrator the nature of the economic opportunity and the related benefit to the economic well-being of the state by the economic opportunity and the likelihood that the state's tax base will be maintained or enlarged.

C. With the advice of the Board of the Governor’s Office of Economic Development, the Administrator has determined that Applicant qualifies for assistance from the MPIF.

ARTICLE I  
DEFINITIONS AND ACCOUNTING TERMS

1.1 DEFINED TERMS. As used in this Agreement, the following terms shall have the meanings set forth respectively after each in addition to other terms defined in this Agreement.

“Above the Line” means the performing and producing elements: talent, script, etc., as customarily presented in a motion picture production budget, but excluding payments made to the director, producers, screenwriters, and principal cast, unless the recipients of the payments are Utah residents or Utah businesses.

“Act” has the meaning given in Recital Section A. above.

“Administrator” means the Governor’s Office of Economic Development of the State of Utah.

“Affiliate” means, as to any person, any other person that directly or indirectly controls, or is under common control with, or is controlled by, such person. As used in this definition, “control” (and its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, or power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

“Agreement” means this Agreement, either as originally executed or as it may from time to time be supplemented, modified, amended, restated or extended.

“Applicant” has the meaning given in the first paragraph of this Agreement, above.

“Below the Line” means elements noted as below the line as customarily presented in a motion picture budget but shall exclude post production, except to the extent that such functions are performed in the State of Utah.

“Cash” means, when used in connection with any person, all monetary and non-monetary items belonging or attributable to such person that are treated as cash in accordance with this Agreement and Generally Accepted Accounting Practices (GAAP).

“Default” means any Event of Default and/or any event that, with the giving of notice or passage of time, or both, would be an Event of Default.

“Dollars” or “\$” means United States dollars.

“Dollars Left in State” means the “Above the Line” and the “Below the Line” expenditures transacted in the State of Utah and subject to a) corporate or business income or franchise tax for a Utah Business, b) personal income tax for a Utah resident, and c) sales and use tax, notwithstanding any sales and use tax exemption allowed in law. Payments made to a non Utah resident are eligible as Dollars Left in State only to the extent of: (i) the income tax paid to the State of Utah on said payments, (ii) the amount of per diems paid, and, (iii) other direct reimbursements transacted in the State of Utah. Payments made to a non-Utah resident independent contractor are eligible as Dollars Left in State only to the extent of per diems, and other direct reimbursements and payments made to him/her for which Utah income taxes were or shall be paid within the current tax year.

“Effective Date” means the date set forth in the first paragraph of this Agreement above.

“Eligible Expenditure Budget” means a full line by line “Above The Line” and “Below The Line” budget containing the expenditure, which the parties agree, forms the total of eligible expenditure for the calculation of Credits.

“Event of Default” means the occurrence of any of the events described in Section 7.1.

“GAAP” means United States generally accepted accounting principles, consistently applied.

“MPIF” has the meaning given in Recital Section A. above.

“MPIF Disbursement” means the grant of the Total Disbursements made by the State to Applicant pursuant to this Agreement as more fully described in Article III.

“MPIF Disbursement Period” means the time period from the beginning of the project in Utah to completion of principal photography in Utah and all of the expenditures made in the State of Utah.

“MPIF Disbursement Request Report” means the Dollars Left in State filed with the Administrator by the Applicant, detailing the MPIF Disbursement for which Applicant claims to qualify in the Disbursement Period. The MPIF Disbursement Request Report must include paid invoices and verifiable evidence of payment, including cancelled checks, or other evidence of payment in support of Applicant's claim for MPIF Disbursements. The MPIF Disbursement Request Report shall describe with particularity the basis for the MPIF Disbursement claimed. The MPIF Disbursement Request Report shall include the completed Completion Bond (see Attachment V), a final script as shot, the Certificate of Compliance (see Attachment VI), Authorization to Disclose Records (see Attachment VIII) and MPIF Disbursement Request Form (see Attachment X). If Applicant believes that any information contained in the MPIF Disbursement Request Report qualifies as business confidential information and desires to protect it, Applicant must follow the requirement referenced in Section 8.7 hereinafter.

“MPIF Documents” means, collectively, this Agreement and the attachments hereto and any legal documents or instrument executed and delivered pursuant to this agreement.

“MPIF Proceeds” means any Cash or Dollars, advanced by the State to Applicant pursuant to this Agreement.

“Non-Utah Resident” means a person who does not reside in the State but is obligated to pay Utah State income taxes upon income deemed to be sourced in the State of Utah.

“Obligations” means all present and/or future obligations of every kind or nature of Applicant at any time and/or from time to time owed to the State, under any one or more of the MPIF Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated or contingent or non-contingent including obligations of performance as well as obligations of payment, and including interest that accrues before or after the commencement of any bankruptcy or insolvency proceeding by or against Applicant.

“Officer” means without limitation any person who is authorized by Applicant's bylaws, operating agreement or other charter documents or pursuant to a delegation of authority in a resolution of its board of directors, managers or other governing body to legally bind

Applicant, and to make written or oral requests to the State for MPIF Disbursements under this Agreement.

“Person” means any individual or entity, whether trustee, corporation, general partnership, limited partnership, limited liability company, sole proprietorship, joint stock company, trust, unincorporated organization, bank, business association, firm, joint venture, government, governmental agency, or otherwise.

“Project” means the economic activity as described in the Project Budget Documents, Project Description, the Project Schedule, the Projection of Dollars Left in State, Attachments I, II, III, IV, and Article II.

“Project Description” means a one page description of the script from which the film is to be shot in Utah, attached as Attachment II, which script in its entirety is held by the administrator in the applicant’s file and which may be modified during filming and re-submitted as part of the MPIF Disbursement Request Report.

“Project Schedule” means the shooting schedule as attached to this Agreement as Attachment III.

“State” has the meaning given in the first paragraph of this Agreement, above.

“Term of this Agreement” means that certain period of time commencing on the Effective Date and terminating 60 days after North American release of the production **NAME OF PRODUCTION** which is scheduled to start production on, or about, **DATE AND YEAR**.

“Total Disbursements” means the aggregate amount of MPIF Disbursements to be made by the State to Applicant pursuant to this Agreement as more fully described in Section 3.1.

“Utah Business” means a business that (a) is licensed, registered and qualified to do business in the State of Utah, (b) has a physical presence in the State, (c) has employees that are Utah residents, and (d) pays taxes in the State of Utah. This Utah Business definition does not include “pass-thru” operations for out-of-state business or businesses that operate from a post office box or in other similar fashion.

“Utah Resident” means a person who resides in the State and pays Utah State income taxes.

“Utah Content” means the production portrays Utah as Utah with Utah names of places in the final product such as actual names of municipalities, institutions, teams, geographical features, etc.

“Utah Recognition” means final film product attributes to Utah as the location of production and shall display the verbiage as identified in Attachment VII “Utah Recognition Credit”.

1.2 ACCOUNTING TERMS. All accounting terms not specifically defined in this Agreement shall be construed in conformity with, and all financial data required to be submitted by this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, except as otherwise specifically prescribed herein.

## ARTICLE II PROJECT DESCRIPTION

Applicant intends to film the Utah portion of the production entitled “**NAME OF PRODUCTION**” as more specifically described in Attachment II, “Project Description”; Attachment III, “Project Schedule (Shooting)”; Attachment IV, “Projected Dollars Left in State”, which are each attached hereto and by this reference specifically made a part hereof.

## ARTICLE III MPIF DISBURSEMENTS

3.1 TOTAL MPIF AND UTAH CONTENT DISBURSEMENTS. Subject to and in accordance with the terms and conditions of this Agreement, and in reliance upon the representations, warranties and covenants of Applicant hereinafter set forth, the State hereby agrees to disburse to Applicant a MPIF Disbursement rebate not to exceed **##%** of the total Dollars Left in State (“Total Disbursements”).

(a) The amount of MPIF Proceeds, which the Applicant is entitled to receive for the Project for any MPIF Disbursement Period shall be calculated based on the Dollars left in the State during that period. The Applicant may claim **## (\$0.##)** for each Dollar Left in State as a result of the Project with a Total Disbursement not to exceed **AMOUNT (\$####)**.

3.2 DISTRIBUTION OF TOTAL DISBURSEMENTS. The Total Disbursements will be distributed by the State as follows:

The Total Disbursements will be distributed upon completion of the project and in accordance with the following subparagraphs:

(a) Within sixty (60) days after the end of the Project or earlier, as agreed by the parties, Applicant shall file and submit the MPIF Disbursement Request Report to the Administrator. The MPIF Disbursement Request Report shall list, describe and set forth (i) the number of Total Dollars Left in State that Applicant claims to have earned during the immediately preceding MPIF Disbursement Period, and (ii) the request of Applicant for distribution of the Total Disbursement for which it believes it is entitled.

(b) Applicant agrees that the State may have access to its returns and reports submitted to the Utah State Tax Commission for the years Applicant is seeking disbursements from the State.

(c) The State shall be under no obligation to pay and release the Total Disbursement funds until Applicant has fulfilled the requirements of this Article III, each of the conditions precedent listed in Article IV has been satisfied and the State has approved the amount claimed in the MPIF Disbursement Request Report submitted by Applicant or that portion of the amount that complies with this Agreement subject to the terms of Section 6.1. The State's obligation to pay and release the Total Disbursement terminates upon the occurrence or existence of any Event of Default described in Section 7.1 of this Agreement, except that non satisfaction of 5.8 shall not constitute an Event of Default. In no event shall the State disburse funds exceeding the amount of the Total Disbursements.

(d) The State shall process up to two MPIF Disbursement Reports for the Project at its own expense. Thereafter, if the Applicant submits any additional MPIF Disbursement Reports, the State shall charge the Applicant for its cost of processing the third or subsequent MPIF Disbursement Reports. The State will charge thirty-five dollars per hour (\$35.00 per hour) for the time it takes to process those additional MPIF Disbursement Reports.

#### ARTICLE IV CONDITIONS PRECEDENT TO DISBURSEMENT

The obligation of the State to disburse any funds under this Agreement is subject to Applicant's satisfaction and completion of all of the following conditions precedent, each of which shall be satisfied and completed (as determined in good faith by the State) prior to or concurrently with the payment and release by the State of the Total Disbursement:

4.1 NO EVENT OF DEFAULT. No Event of Default shall have occurred.

4.2 CERTIFICATE OF COMPLIANCE. An authorized Officer of Applicant shall execute and deliver to the State a certificate of compliance, the form of which is attached hereto as Attachment VI, certifying that Applicant's covenants, representations and warranties contained in this Agreement are still true and correct as of the date of the certificate of compliance.

4.3 MPIF DISBURSEMENT REQUEST REPORT: The Applicant shall provide a complete MPIF Disbursement Request Form (Attachment X), including a Completion Bond, a Final Script as shot, the Certificate of Compliance (described in Section 4.2) and the Authorization to Disclose Records. The Administrator shall review and approve the MPIF Disbursement Request Report if it accurately substantiates the request.

4.4 PRODUCTION ACTIVITY REQUIREMENT: Applicant shall commence preproduction activities in a serious way on or before **DATE** and shall complete the post

production activities on or before **DATE**. These dates may be extended with the mutual agreement of the Applicant and the State, in writing if circumstances warrant.

If the Applicant has not completed the above two activities within **120** days after the dates above stated, the State is under no obligation to provide rebates to the Applicant.

If Applicant cannot meet the above deadlines, they will notify State and the money allocated to their project will be freed up for other Applicants, but Applicant can reapply for the rebates at a later date and their application will be considered as a new application.

## ARTICLE V REPRESENTATIONS AND WARRANTIES

Applicant hereby represents and warrants to the State that:

5.1 EXISTENCE AND QUALIFICATION; POWER. Applicant is a **TYPE OF COMPANY** duly formed and validly existing under the laws of the **State of STATE** and is in good standing and is duly qualified to do business in the State of Utah. Applicant has all requisite power and authority to conduct its business, to own and lease its properties and to execute, deliver and perform all of its obligations under the MPIF Documents.

5.2 AUTHORITY COMPLIANCE. The individuals executing this Agreement on behalf of Applicant are duly authorized to do so. The execution, delivery and performance by Applicant of the MPIF Documents to which it is a party and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action, and do not and will not:

- (a) Require any consent or approval not heretofore obtained of any director, stockholder, creditor or any other person;
- (b) Violate or conflict with any provision of Applicant's articles of organization, operating agreement, or amendments thereto, as applicable;
- (c) Violate or conflict with any provision of any agreement, note, lease or instrument to which it is a party;
- (d) Violate any provision of any federal, state or local law, rule or regulation; and Applicant is not in default under any law, order, writ, judgment, injunction, decree or award or any indenture, agreement, note, lease or instrument in any respect that is materially adverse to the interests of the State or that would have any material adverse effect on the business, operations or condition (financial or otherwise) of Applicant taken as a whole or its compliance with this Agreement including the State of Utah pornography and obscenity laws.



5.3 COMPLIANCE WITH LAW. Applicant is in compliance with all laws and other legal requirements applicable to its business, has obtained authorizations, consents, approvals, orders, licenses and permits from all necessary entities and has accomplished all necessary filings, registrations and qualifications, (or obtained exemptions from such from the appropriate entities) that are necessary for the transaction of its business, except where the failure to comply, file, register, qualify or obtain exemptions would not have an adverse effect on the business, operations or condition (financial or otherwise) of Applicant taken as a whole.

5.4 BINDING OBLIGATIONS. This Agreement will, when executed and delivered by Applicant, constitute the legal, valid and binding obligation of Applicant, enforceable against Applicant in accordance with its terms.

5.5 DISCLOSURE. To the best of Applicant's knowledge no written statement made by Applicant to the State in connection with this Agreement or Applicant's application for MPIF funds contains any untrue statement of a material fact or omits a material fact necessary to make the statement made not misleading. To the best knowledge of Applicant there is no fact which Applicant has not disclosed to the State in writing which materially and adversely affects nor, so far as Applicant can now foresee, is reasonably likely to prove to affect materially and adversely the business, operations, properties, prospects, profits or condition (financial or otherwise) of Applicant taken as a whole or the ability of Applicant to perform its obligations under the MPIF Documents.

5.6 INSOLVENCY AND RELATED MATTERS. Applicant is able to pay its debts as they mature, and has not: (a) made any assignment for the benefit of creditors; (b) admitted in writing its inability to pay its debts as they mature; (c) applied for or consented to the appointment of a receiver, trustee or similar official for its affairs; or (d) been the subject of any bankruptcy, insolvency, reorganization or liquidation proceeding, or any other proceeding for relief under any bankruptcy law or any law for the relief of debtors or benefit of creditors.

5.7 SCRIPT WARRANTY. Applicant warrants that the script held by the administrator in the Applicant's file and submitted in the application, described in Attachment II is owned by Applicant, that no other person or entity has any legal rights with respect thereto, and that said script will be the script that is shot, subject to changes made during the filming to enhance the script, due to production exigencies or at the direction of the Applicant. If changes in script reduce the benefits to State, Administrator must approve of the changes before any disbursements will be made.

5.8 UTAH RECOGNITION WARRANTY. Applicant warrants that the Utah Recognition credit as set out in Attachment VII will be included in the credits of the film. Applicant or its assignee will provide the State with written confirmation by **DATE (See 7.2)** that the Utah Recognition credit has been included in the film.

5.9 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations and warranties contained herein or in any certificate, attachment, schedule or other



writing delivered by or on behalf of Applicant shall survive at least nine months after the Total Disbursement has been made.

## ARTICLE VI AFFIRMATIVE COVENANTS

During the Term of this Agreement, unless the State otherwise consents in writing, Applicant shall fully perform and satisfy the following obligations:

6.1 REPORTS. Applicant shall deliver to the State at Applicant's sole expense:

(a) Immediately upon becoming aware of the existence of any condition or event which constitutes a Default, a written notice specifying the nature and period of existence thereof and what action Applicant is taking or proposes to take with respect thereto.

(b) Promptly after any reasonable request by the State, provide such other data and information regarding Applicant and/or the Project. If Applicant desires to protect the confidentiality of any information supplied, Applicant shall file a business confidentiality claim as set forth in Section 8.7 hereinafter.

(c) As soon as available, and in no event later than sixty (60) days after the end of the project, the MPIF Disbursement Request Report shall be submitted to the Administrator.

(d) It is expressly agreed by the parties that the Administrator shall determine the manner of recognizing and accounting for Dollars Left in State claimed by Applicant, but only in a manner consistent with this Agreement. Subject to the timing set out in Article III, upon receipt by the State of the MPIF Disbursement Report the Administrator or his or her staff shall review such report and to the extent required, may request additional information from Applicant which is reasonably necessary to determine the validity of any claimed MPIF Disbursement. Applicant agrees to promptly provide all such information to the State. To the extent that the Administrator or his or her staff is still unable to reasonably verify the accuracy of any claimed MPIF Disbursement, the Administrator shall cause its internal auditor to audit the amount of such claimed MPIF Disbursement. Applicant shall reasonably cooperate with such audit, but the costs thereof shall be paid by the State. If upon the completion of such internal audit, the Administrator is still unable to reasonably determine the validity of any claimed MPIF Disbursement, the Administrator may select and hire an independent auditor to audit the amount of such MPIF Disbursement claimed by Applicant. Any costs associated with the employment of such independent auditor shall be paid in total by Applicant upon presentation of the State's invoice and supporting information for the same. Audit expenses may only be paid by Applicant in Cash and not MPIF Disbursement. The independent auditor will be required to sign a confidentiality agreement that provides that release of any information obtained in the audit is limited to release to Applicant and to the State. If Applicant desires to protect the confidentiality of any information supplied to the State as part of any audit, Applicant shall file a business confidentiality claim as set forth in Section 8.7

hereinafter. Any MPIF Disbursements claimed by Applicant that are not supported by the foregoing audit procedures shall be disallowed.

**6.2 REVISIONS OR UPDATES TO ATTACHMENTS.** Should any of the information or disclosures provided in the Attachments originally attached hereto become outdated or incorrect in any material respect, at the time of and in connection with each request for disbursement, Applicant shall provide to the State such revisions or updates to such Attachments as may be necessary or appropriate to update or correct such Attachments. However, no such revisions or updates to any Attachments shall be deemed to have amended, modified or superseded such Attachments as originally attached hereto, or to have cured any breach of any warranty or representation resulting from the inaccuracy or incompleteness of any such Attachments, unless and until the State in its sole and absolute discretion, shall have accepted in writing such revisions or updates to such Attachments.

**6.3 PRESERVATION OF EXISTENCE.** Applicant shall preserve and maintain its existence, licenses, rights, franchises and privileges in the jurisdiction of its formation and all authorizations, consents, approvals, orders, licenses, permits or exemptions from, or registrations with, any governmental agency that are necessary for the transaction of its business, and qualify and remain qualified to transact business in Utah and in the jurisdiction of organization through-out the Project Schedule until completion.

**6.4 COMPLIANCE WITH LAWS.** Applicant shall comply with the requirements of all applicable laws and orders of any governmental agency if noncompliance of such could adversely affect the business, operations or conditions (financial or otherwise) of Applicant.

**6.5 KEEPING OF RECORDS AND BOOKS OF ACCOUNT.** Applicant shall keep adequate records and books of account reflecting all financial transactions relating to the Project in conformity with GAAP.

**6.6 NO TRANSFER OF PROJECT.** Applicant shall not transfer, convey or assign its rights, interests and titles in the Project, the business functions conducted at the Project and/or the Project's assets during the Project without the transferee's assumption of Applicant's duties and obligations described herein which assumption shall not relieve Applicant of its duties to insure full performance hereunder. Upon the completion of principal photography of the Picture, all of Applicant's rights, interest and title in and to the Picture, including, without limitation any benefits received hereunder, shall be fully transferable and assignable by Applicant. In the event of transfer applicant agrees to notify transferee of all obligations and duties assumed under this agreement

## ARTICLE VII EVENTS OF DEFAULT AND REMEDIES

**7.1 EVENTS OF DEFAULT.** The existence or occurrence of any one or more of the following events, whatever the reason thereof, shall constitute an Event of Default:

(a) Any failure by Applicant to notify the State of a Default as required by Section 6.1(a) of this Agreement.

(b) Applicant's failure to perform or observe any term, covenant or agreement contained in this agreement required to be performed.

(c) If any representation, warranty or covenant made by Applicant in this Agreement proves to have been incorrect in any material respect when made or in any respect that is adverse to the interests of the State.

(d) If any MPIF Document under this agreement, at any time after its execution and delivery and for any reason other than the agreement of the State or expiration of the Term of this Agreement, ceases to be in full force and effect or is declared by a court of competent jurisdiction to be null and void, invalid or unenforceable in any respect, or if Applicant denies that it has any or further obligation under any MPIF Document under this agreement, or purports to revoke, terminate or rescind the same.

(e) The non-performance of 5.8 shall not constitute an Event of Default in respect of the payment of the Total Disbursement but is subject to 7.2, which obligates the Applicant or transferee to payment of liquidated damages.

**7.2 REMEDIES UPON EVENT OF DEFAULT.** Without limiting any other rights or remedies of the State provided for elsewhere in this Agreement, by statute, by regulation, by common law or otherwise:

(a) Upon the occurrence of any Default or Event of Default the State may refuse to grant the Total Disbursement claimed by Applicant until such Default or Event of Default is cured, except in the case of 5.8. Clause 5.8 shall not be an Event of Default as to State withholding payment of the Total Disbursement. In respect to 5.8, the State must receive written advice from Applicant within 7 days of **DATE** (approximate post production completion date) that the credits have been included in the titles. In the event of a default in respect of 5.8, or for any other Event of Default, State shall not be entitled to seek or obtain injunctive or other equitable relief with respect to the Applicant or the film, and/or the distribution, exhibition, or other exploitation of the film, and/or the advertising, promotion, or publicizing thereof. Notwithstanding the foregoing, Applicant or transferee acknowledges that non-performance of 5.8 would result in material damage to the State and, in the event of such non-performance agrees to pay to the State, upon demand, liquidated damages in the amount of thirty percent (30%) of the Total Disbursements.

(b) Upon the occurrence of any Event of Default, other than 5.8, the State, or any employee, agent or representative thereof, may have reasonable access to examine, audit and make copies and abstracts from the records and books of account of Applicant regarding the Project and may visit and inspect the Project during reasonable business hours upon reasonable notice and, upon request, Applicant will furnish promptly to the

State true copies of all documents and other information that have been disclosed to other entities or to the U.S. Securities and Exchange Commission and other governmental agencies, or should have been disclosed to the U.S. Securities and Exchange Commission and other governmental agencies.

## ARTICLE VIII MISCELLANEOUS

8.1 CUMULATIVE REMEDIES; NO WAIVER. The rights, powers, privileges and remedies of the State provided herein are cumulative and not exclusive of any right, power, privilege or remedy provided at law or in equity. No failure or delay on the part of the State in exercising any right, power, privilege or remedy may be, or may be deemed to be, a waiver thereof; nor may any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of the same or any other right, power, privilege or remedy. The terms and conditions of Article VIII hereof are inserted for the sole benefit of State and the State may waive them in whole or in part, with or without imposing other terms or conditions.

8.2 AMENDMENTS; CONSENTS. No amendment, modification, supplement, extension, termination or waiver of any provision of this Agreement; no approval or consent thereunder, and no consent to any departure by Applicant therefrom may in any event be effective unless approved in writing signed by the Parties.

8.3 NOTICES. All written notices, demands and requests of any kind which any party may be required or may desire to serve upon the other party hereto in connection with this Agreement may be delivered by courier or other means of personal service, or by registered or certified mail. Any such notice or demand so delivered by registered or certified mail shall be deposited in the United States mail, or in the case of courier, deposited with the courier, with postage thereon fully prepaid. All notices shall be addressed to the parties to be served as follows:

If to the State:  
Jason P. Perry, Administrator  
Executive Director  
Governor's Office of Economic  
Development  
324 South State Street, Suite 500  
Salt Lake City, Utah 84111

With a copy to:  
William Loos  
Assistant Attorney General  
324 South State Street, Suite 500  
Salt Lake City, UT 84111

If to Applicants:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In respect of clause 5.8:  
Marshall Moore, Director  
Utah Film Commission  
Council Hall / Capital Hill  
300 North State Street  
Salt Lake City, Utah 84114

Service of any such notice or demand by mail so made shall be deemed complete three (3) days after deposit in the United States Postal Service with postage attached as shown or the date of actual delivery, whichever is earlier. Any party hereto may from time to time by notice in writing served upon the other as aforesaid designate a different mailing address or a different or additional person to which all such notices or demands thereafter are to be addressed.

**8.4 BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon the parties and their respective successors and assigns, except that Applicant may not assign, sell, transfer or convey its rights or any interest under this Agreement without the prior written consent of the State which may be withheld for any reason in the sole discretion of the State. Upon the completion of principal photography of the Picture, all of Applicant's rights, interest and title in and to the Picture, including, without limitation any benefits received hereunder, shall be fully transferable and assignable by Applicant.

**8.5 NON-LIABILITY OF THE STATE.** Applicant acknowledges and agrees that:

(a) By accepting or approving anything required to be observed, performed, fulfilled or given to the State pursuant to this Agreement, including any certificate, financial statement, insurance policy or other document, the State shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by the State;

(b) The relationship between Applicant and the State is and at all times will be and remain solely that of an applicant and grantor of financial assistance. The State shall not under any circumstance be construed to be a partner or joint venture of Applicant. The State shall under no circumstance be deemed to be in a relationship of confidence or trust or a fiduciary relationship with Applicant, or to owe any fiduciary duty to Applicant. Applicant is an independent contractor and the State does not undertake or assume any responsibility or duty to Applicant to select, review, inspect, supervise, pass judgment upon or inform Applicant on any matter in connection with their property; Applicant shall rely entirely upon its own judgment with respect to such matters; and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by the State in connection with such matters is solely for the protection of the State and neither Applicant nor any other person is entitled to rely thereon; and

(c) The State shall not be responsible or liable to any person or entity for any loss, damage, liability or claim of any kind relating to injury or death to Persons or damage to property or other losses caused by the actions, inaction or negligence of Applicant and Applicant hereby indemnifies and holds the State harmless from any such loss, damage, liability or claim.

**8.6 NO THIRD PARTIES BENEFITTED.** This Agreement is made for the purpose of defining and setting forth certain obligations, rights and duties of Applicant and the State in connection with the Total MPIF Disbursements and is made for the sole protection of

Applicant and the State, and the State's successors and assigns; except as provided in Section 8.4 no other Person shall have any rights of any nature hereunder or by reason hereof.

8.7 CONFIDENTIALITY. The parties understand and agree that access to records prepared, owned, received, or retained by the State is governed by the Utah Governmental Records Access and Management Act ("GRAMA"), UCA Section 63G-2-101, et seq. Company may protect the confidentiality of any document it supplies to the State to the extent allowed by GRAMA if: (1) Company makes a written claim of business confidentiality under UCA Section 63G-2-309, and (2) one or more of the exceptions noted in UCA Section 63G-2-305 apply. If the State determines that a record claimed to be confidential and protected under UCA Section 63G-2-309 and Section 63G-2-305 should be released, Company has the right to appeal the decision to release the record pursuant to UCA Section 63G-2-401 to 405. Any decision to release confidential records may be reviewed by the State Records Committee and/or the District Court of the State.

8.8 ENTIRE AGREEMENT. This Agreement, all other MPIF Documents, and any document or instrument executed and delivered pursuant to this Agreement constitute and are intended to constitute the complete, entire and final agreement of the parties regarding the subject matter hereof and expressly supersede all prior and contemporaneous agreements, representations, promises and negotiations whether written or oral, regarding the subject matter. In the event of any conflict between provisions of this Agreement and those of any other MPIF Document, the provisions of this Agreement shall control and govern, provided that the inclusion of supplemental rights or remedies in favor of the State in any other MPIF Document shall not be deemed a conflict with this Agreement.

8.9 GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah.

8.10 SEVERABILITY. Any provision in this Agreement that is held to be inoperative, unenforceable or invalid in whole or in part as to any party or in any jurisdiction shall, as to that party or jurisdiction, be inoperative, unenforceable or invalid to such extent without affecting the remaining provisions or the operation, enforceability or validity of that provision as to any other party or in any other jurisdiction.

8.11 HEADINGS. Article and Section headings in this Agreement are included for convenience of reference only and are not part of this Agreement for any other purpose.

8.12 CHOICE OF FORUM. Except as otherwise expressly provided, the parties agree, consent to and intend that the proper and exclusive forum for any litigation of any disputes or controversies arising out of or related to this agreement or the MPIF Documents, together with personal jurisdiction over each of the parties, shall be a court of competent jurisdiction located in the State of Utah, County of Salt Lake.

8.13 INABILITY TO BIND THE STATE. Applicant shall have no authorization, expressed or implied, to bind the State to any agreement, settlement, liability, or understanding whatsoever, nor to perform any acts as agent for the State.

8.14 ATTORNEYS FEES AND OTHER EXPENSES. Notwithstanding any other provision of this Agreement, if any legal action or other proceeding is brought for the enforcement, clarification or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, and any other fees and costs incurred in the action or proceeding, in addition to any other relief to which such party may be entitled.

8.15 TERM AND TERMINATION. This Agreement shall commence on the Effective Date and shall not end until the last to occur of (i) the last day of the term of this Agreement, (ii) the date the State disburses the full MPIF Disbursement, or (iii) the date the Applicant has satisfied all its obligations under this Agreement (as determined at the State's sole discretion).

INTENDING TO BE LEGALLY BOUND, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

THE STATE OF UTAH

NAME OF COMPANY

\_\_\_\_\_  
Jason P. Perry, Administrator  
Executive Director  
Governor's Office of Economic Development  
Date \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Approval for Funding

\_\_\_\_\_  
Stanley E. Nance, Director of Finance  
Governor's Office of Economic Development  
Approval for Expenditure  
Date \_\_\_\_\_

\_\_\_\_\_  
Contracts Number  
State of Utah, Division of Finance



## **ATTACHMENTS**

ATTACHMENT I Project Budget Documents  
ATTACHMENT II Project Description  
ATTACHMENT III Project Schedule (Shooting)  
ATTACHMENT IV Projected Dollars left in State  
ATTACHMENT V Completion Bond (Certificate of Insurance)  
ATTACHMENT VI Certificate of Compliance  
ATTACHMENT VII Utah Recognition Credit  
ATTACHMENT VIII Authorization to Disclose Records  
ATTACHMENT IX MPIF Rebate Report Guidelines  
ATTACHMENT X MPIF Disbursement Request Form

ATTACHMENT I  
PROJECT BUDGET DOCUMENTS

EXAMPLE ONLY - SUBJECT TO CHANGE

ATTACHMENT II  
PROJECT DESCRIPTION

EXAMPLE ONLY - SUBJECT TO CHANGE

ATTACHMENT III  
PROJECT SCHEDULE

EXAMPLE ONLY - SUBJECT TO CHANGE

ATTACHMENT IV

PROJECTED DOLLARS LEFT IN STATE

EXAMPLE ONLY - SUBJECT TO CHANGE

ATTACHMENT V  
COMPLETION BOND

EXAMPLE ONLY - SUBJECT TO CHANGE

# CERTIFICATE OF COMPLIANCE

1. I am the \_\_\_\_\_ of Applicant and have the right to bind applicant.  
title of officer
2. Any capitalized terms otherwise not defined in this Certificate of Compliance shall have the meanings given to them in the Agreement.
3. Applicant is not in Default in the performance of any of its covenants or agreements contained in any MPIF Document.
4. Utah Recognition Credit has been included in the credits of the production.
5. Applicant's representations and warranties contained in the Agreement are true and correct as of the date of this Certificate of Compliance set forth below.

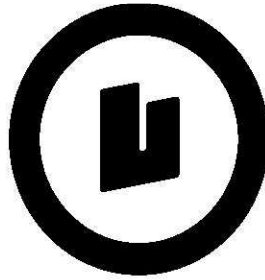
Officer of Applicant

EXAMPLE ONLY – SUBJECT TO CHANGE  
LAST UPDATED 8/5/2008



ATTACHMENT VII

UTAH RECOGNITION CREDIT



**UTAH FILM**  
COMMISSION

Shot on Location in Utah  
Special Thanks  
to the  
Utah Film Commission

**FILM.UTAH.GOV**

## ATTACHMENT VIII

### AUTHORIZATION TO DISCLOSE RECORDS

\_\_\_\_\_, a \_\_\_\_\_ (Company) registered and qualified to conduct business in Utah authorizes the Utah State Tax commission ("USTC") to provide the Governor's Office of Economic Development with copies of returns filed by Company with USTC:

1. For the tax period ending on **DATE**, and for future years, but only for the years in which company is seeking a disbursement from the Governor's Office of Economic Development under Agreement dated \_\_\_\_\_.

Print Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

Notarized Signature

## ATTACHEMENT IX

### MPIF REBATE REPORT GUIDELINES

#### 1. General Guidelines

- Documentation can be submitted in hard copy, electronic copy or a combination of both. Expenses must be broken out by expense type (A/P, Payroll, Petty Cash, etc.) and paid invoice and canceled check documentation is required:
- Hard Copy Documentation:
  - Documentation must be bound together (multiple binders may be used)
  - Individual Binders must have separate summary sheets
  - Complete submission summary sheet required
  - All summary sheets must also be provided to the administrator in Excel Format
- Electronic Documentation:
  - CD-ROM is the only media that is allowed for electronic submission; 3 copies of each CD-ROM are required
  - All receipts, paid invoices and other documentation must be burned onto the CD-ROM in PDF format
  - All summary sheets must also be provided to the administrator in Excel Format
- A copy of Final Script as Shot or Document showing the changes from the original script
- Completion Bond
- Certificate of Compliance
- Authorization to Disclose Records
- MPIF Disbursement Request Form

#### 2. Master Summary Sheet

- Submission to include a master summary sheet totaling each section (A/P, Payroll, Petty Cash etc.), referencing CD-ROM/Binder location, and the total amount being submitted for incentive rebate.

#### 3. Accounts Payable

- Submission to include an A/P expense summary sheet listing each item and referencing CD-ROM/Binder location, vendor name/check number and the total amount being submitted for incentive rebate.
- Arrange supporting documentation in CD-ROM/Binder by vendor name/ID or check number in the order that it is on the summary sheet.
- Each transaction must include a valid invoice from the vendor and a copy of the corresponding check. The invoice must clearly show vendor location, the amount of invoice and that the invoice was paid (a check request alone does not fulfill this requirement).

#### 4. Petty Cash

- Submission to include a petty cash expense summary sheet referencing CD-ROM/Binder location, petty cash recipient name and the total amount being submitted for incentive rebate.
- Arrange supporting documentation in CD-ROM/Binder by recipient name/ID or petty cash form number in the order that it is on the summary sheet.
- Supporting information must include each individual petty cash form listing all purchases, description, dates, vendor, and amount of each.
- A copy of the receipt for each Utah purchase must be included and must clearly show the amount of the purchase, vendor name, date and vendor location or other verification that the purchase was made in Utah. The verification of Utah may be obtained from an address on the receipt, an area code of the phone number of the establishment, a printout from the vendor showing all paid purchases or some other verification the administrator has approved in writing.

#### 5. Payroll for Utah Residents

- Submission to include a payroll expense summary sheet referencing CD-ROM/Binder location, recipient name, recipients state of residency and the total amount being submitted for incentive rebate AND a detailed payroll report from your payroll company.
- State of Residency must be clearly documented for each recipient of a payroll check. Documentation of residency can include a copy of the recipients W4 (paychecks should correspond to this form showing Utah withholding tax), a signed declaration of non-residency form (below) or some other verification the administrator has approved in writing.
- Please include payroll company invoices along with a copy of the check that was used to pay.
- Arrange supporting documentation in CD-ROM/Binder by recipient name/ID in the order that it is on the summary sheet.
- All payroll expenses for Utah Residents will be counted except payroll fees to a non Utah company.

##### a. Payroll for out of State residents

- The following chart explains what is and is not accepted for out of State residents:

##### **Payroll - Employee**

Gross Wages

Net Pay

Federal Withholding

State Withholding

Social Security

Medicare

##### **Out of State Employee**

NO

NO

NO

YES - Utah withholding only, other states disqualified

NO

NO

##### **Fringes - Company**

Social Security

Medicare

FUITA

NO

NO

NO

SUITA	NO
Workers Comp	YES - Utah Workers Comp only, other states disqualified

Per Diem	YES
Box Rental	NO
Handling/Payroll Fees	NO

**6. Other Guidelines:**

**a. Shipping, Airline and Phone Expenses**

- Shipping expenses (with at least one destination point in Utah) shall be reduced by 2/3rds
- Airline expenses (with at least one destination point in Utah) shall be reduced by one half ½
- Phone expenses (with at least one destination point in Utah) shall be reduced by one half ½

*\*all rebate report submissions are subject to administrator approval*

DECLARATION OF NON-RESIDENCY /CONSENT FORM

Name of Production: \_\_\_\_\_

Production Company: \_\_\_\_\_

Employee's Name or Loan-out Company: \_\_\_\_\_

\_\_\_\_\_

Social Security Number or Federal ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Occupation: \_\_\_\_\_

With Respect to the above production I hereby certify and confirm that:

1. I am subject to income tax in the State of Utah in the calendar year 2008 by virtue of being a non-resident working in Utah. If this status continues into other calendar years, I will be subject to income tax in the State of Utah for those years.
2. I am currently working or will work in the State of Utah under the terms of my agreement on this production
3. I understand that the production company will be relying upon the declaration for its application for a production tax credit, and may be subject to government audit, and hereby certify and warrant under the penalty of perjury under the laws of the State of Utah that the above information is true and correct.
4. I hereby grant permission for the production company to supply the information contained in this form as well as information with respect to my position on the production including, but not limited to, my salary, number of hours worked, and any other necessary information in order to determine that my compensation for work on the project qualifies for the tax credit in connection with the production company's application of the tax credit.

\_\_\_\_\_  
Signature of Declarant

\_\_\_\_\_  
Date

ATTACHMENT X

MPIF DISBURSEMENT REQUEST FORM

Production Name:

\_\_\_\_\_

Production Company:

\_\_\_\_\_

Date Disbursement Request Submitted to Administrator:

\_\_\_\_\_

Utah Submitted Spend Breakdown:

- a. A/P: \_\_\_\_\_
- b. Petty Cash: \_\_\_\_\_
- c. Payroll: \_\_\_\_\_
- d. Other: \_\_\_\_\_
- Total Utah Submitted Spend: \_\_\_\_\_

Total Project Utah Spend\*:

\_\_\_\_\_

Dollar Amount of Rebate Requested:

\_\_\_\_\_

Requesting Party Information

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\* Total Project Utah Spend: Total amount spent on project in Utah (including what has been submitted for rebate)



## OPTIONAL

### REQUEST FOR PROTECTED RECORD STATUS (Business Confidentiality Claim)

**Name and Address** of business and representative making this confidentiality claim (please print or type):

---

I request that the attached /enclosed information (record) provided to the Governor's Office of Economic Development (GOED), or any of its agencies (divisions or programs), be considered confidential and given protected status.

**Description** (optional) of the information (record) which is to be covered by this confidentiality claim and which you believe qualifies for protected status.

---

**The Following reasons support this claim of business confidentiality;** Please check (✓) all of the following which apply:

- ☐ 1. The Record provided is a trade secret (as defined in U.C.A. 13-24-2).
- ☐ 2. The record is commercial or non-individual financial information and disclosure of the information could reasonably be expected to result in unfair competitive injury to the provider of the information.
- ☐ 3. The record is commercial or non-individual information and disclosure of the information could reasonably be expected to impair the ability of GOED, or its agencies, to obtain necessary information in the future.
- ☐ 4. The record is commercial or non-individual financial information and the interest of the provider in prohibiting access to the information is greater than the interest of the public in obtaining access.
- ☐ 5. The information provided may contain the following (see U.C.A. 63G-2-305 for complete information on records which may be classified as protected):
- a. The record would reveal negotiations regarding assistance or incentives offered by or requested from GOED, or one of its agencies, for the purpose of encouraging a person to expand or locate a business in Utah, and disclosure would result in actual economic harm to the person or place GOED, or one of its agencies, at a competitive disadvantage. (U.C.A. 63G-2-305(35))
- NOTICE: Records evidencing a final contract may not be classified protected under this section.

Statement (a concise written statement supporting a business confidentiality claim is required, U.C.A. 63G-2-309(1)(a)), attach additional sheets if necessary.

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**NOTE:** Claimant shall be notified if a record claimed to be protected is classified public or if the determination is made that the record should be disclosed because the interest favoring access outweigh the interest favoring restriction of access. Records claimed to be protected under this business confidentiality claim may not be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal (unless the claimant, after notice has waived the claim by not appealing or intervening before the record committee). (U.C.A. 63G-2-309)

By \_\_\_\_\_ Date \_\_\_\_\_  
Name and Title

EXAMPLE ONLY - SUBJECT TO CHANGE